IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.340 OF 2003

Chhagan Bhikulal Marwadi Kumbhar
(deceased - through his L.Rs
Ram Chhagan Marwadi -Kumbhar & anr. .. Petitioners.

Vs

Hillpoint Co-operative Society
Office .. and ors. .. Respondents

Mr N.P.Deshpande, for the petitioners.

Mr S.S.Redekar, for respondent nos 1 to 5.

CORAM : D.B.BHOSALE,J.

DATE : 29.11.2005.

PC:

1. Heard the learned counsel for the parties.

2. This petition is directed against the order dated 16/11/2000 passed below Exhibit-1 in M.A.No.545 of 1997, by which VIII Addl.District Judge dismissed the said application. The application was filed for condonation of delay in preferring the appeal against the judgment and decree of possession dated 17.11.1994. The application for condonation of delay was filed on 10.7.97.

3. The ground made out for seeking condonation of delay by the petitioners was that they had engaged a lawyer who had specifically told them that he would inform the date/s of hearing and, therefore, they were waiting for a call from their lawyer. However, on 26.7.97 the police visited the suit premises asking the petitioners to vacate the same, when for the first time they came to know that the suit has already been decreed. When they tried to contact their advocate on record they found that the advocate was dead and therefore, he could not inform the date/s of hearing and hence the suit came to be decreed exparte.

4. Mr Deshpande, learned counsel for the petitioners, submits that the petitioners may not be made to suffer for the negligence of the lawyer and/or for the circumstances which they were landed in. He then submitted that they may be given an opportunity to assail the exparte decree of possession in appeal. It reveals from the record that the petitioners had engaged one Kazi Advocate and he had filed Vakalatnama on their behalf in the aforesaid suit. It further reveals that advocate Kazi, from time to time, had made an attempt to contact the petitioners but there was no response from

them and hence he ultimately had to file "no instruction" purshis (Exh-44). Even the stand taken by the petitioners that their advocate was dead, also turned out to be false. The entire record was examined by the learned Judge and after recording the findings to that effect rejected the application. The relevant observations in paragraph 5 of the impugned order reads thus:

> "5. On perusal of the main contents in the application, the sole ground put forth for condonation of delay is that the advocate of the applicants was dead and due to that they were not informed about the dates. Now, I have to find out who was the advocate engaged by the applicants. For that purpose, I have called the record and proceedings. It revealed that the applicants have engaged Advocate Shri S.A.Kazi. His "Vakalatnama" was filed at Exhibit-10 in the original suit. It also revealed that Advocate Kazi had appeared from time to time. It also appears that as the present applicants were not cooperating him, he had filed application (Exhs 36,37,42 and 43) before the lower Court. It also revealed that the present applicants were duly informed about the dates, however, they did not appear before the lower Court and thus lastly Shri Kazi, Advocate filed pursis Exh.44. Thus, it is clear from the record that Shri Kazi, advocate who is very well alive today was engaged by the present applicant. There is no "Vakalatnama" on behalf of the applicants of the advocate who is reported dead. It appears that in the application the applicants did not state the name of the advocate to whom they had engaged in the lower Court. It appears that they have deliberately suppressed the name of the advocate engaged by them. It revealed that advocate Shri P.J.Dongare, who was representing original defendant nos 1,2 and 3 was dead. Advocate Shri Dongare had not filed "Vakalatnama" in the suit

> on behalf of the present applicants and thus the very ground put forth by the applicants for condonation of delay is false. There is inordinate delay. Same is not properly explained and thus the application deserves to be dismissed. Hence the order. The application is dismissed."

5. From perusal of the aforesaid paragraph and the other material placed before me, it is clear that the petitioners had taken not only false defence but it was dishonest and such conduct of the litigants cannot be tolerated and overlooked by showing indulgence. The cause shown by the petitioners was not only insufficient but it was false and dishonest and hence I find no reason to interfere with the order passed by the Court below in extremely limited jurisdiction of this Court under Article 227 of the Constitution of India. The writ petition, therefore, fails and is dismissed as such.

(D.B.Bhosale,J.)